

DAN SIEGEL, SBN 56400  
EMILYROSE JOHNS, SBN 294319  
SIEGEL, YEE & BRUNNER  
475 14th Street, Suite 500  
Oakland, California 94612  
Telephone: (510) 839-1200  
Facsimile: (510) 444-6698

Attorneys for Plaintiffs  
NANCI ARMSTRONG-TEMPLE  
BARBARA BRUST,  
and MICHELLE LOT

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

NANCI ARMSTRONG-TEMPLE,  
BARBARA BRUST, and  
MICHELLE LOT

Plaintiffs,

vs.

CITY OF BERKELEY; ANDREW B.  
RATEAVER, individually and in his  
official capacity as a lieutenant for the  
police department of the City of Berkeley;  
SEAN TINNEY, individually and in his  
official capacity as an officer for the police  
department of the City of Berkeley;  
PETER HONG, individually and in his  
official capacity as a sergeant for the  
police department of the City of Berkeley;  
SAMANTHA MARTINEZ, individually  
and in his official capacity as an officer for  
the police department of the City of  
Berkeley; MATTHEW MCGEE,  
individually and in his official capacity as  
an officer for the police department of  
the City of Berkeley; DARREN KACALEK,  
individually and in his official capacity as  
a detective for the police department of  
the City of Berkeley; KEVIN PETERS,  
individually and in his official capacity as

) Case No.

)  
) **COMPLAINT FOR DAMAGES AND**  
) **INJUNCTIVE AND DECLARATORY**  
) **RELIEF**

) **(Civil Rights)**

) **Demand for Jury Trial**

1 an officer for the police department of )  
2 the City of Berkeley, )  
3 Defendants. )

## 4 INTRODUCTION

5 1. In the winter of 2016, the City of Berkeley evicted members of an  
6 intentional community of homeless men and women known as First They Came for the  
7 Homeless (“FTCftH”) over a dozen times. Members of the encampment were outspoken  
8 about Berkeley’s efforts to criminalize homelessness, and were targeted for evictions as  
9 a result.

10 2. Their plight became well known in the Berkeley community, and  
11 community members joined the encampment in being outspoken about the  
12 homelessness crisis and the unjust and inhumane way that encampments were treated  
13 in Berkeley.

14 3. In the course of these evictions and raids, Berkeley police came to know  
15 individual members and supporters of FTCftH, and in some cases were aware of  
16 specific conditions and vulnerabilities.

17 4. Two such community members were Barbara Brust, director of Consider  
18 the Homeless, and Nanci Armstrong-Temple, then-candidate for the District 2 seat of  
19 the Berkeley City Council.

20 5. In November 2016, the City escalated its tactics during evictions of  
21 FTCftH. Officers increased arrests and the uses of force. Encampment supporters  
22 including Ms. Brust and Ms. Armstrong-Temple, and encampment resident Michelle  
23 Lot were subject to such unlawful uses of force and such false arrests.

24 6. This suit arises from the violations of the constitutional and statutory  
25 rights that they suffered.

## 26 JURISDICTION AND VENUE

27 7. This Court has jurisdiction over plaintiffs’ claims pursuant to 28 U.S.C. §  
28 1331 (claims arising under the U.S. Constitution) and § 1343(a)(3) (claims brought to

1 address deprivations, under color of state authority, of rights, privileges, and  
2 immunities secured by the U.S. Constitution), and 42 U.S.C. § 1983.

3 8. The state law claims in this action are so related to claims in the action  
4 within original jurisdiction that they form part of the same case or controversy under  
5 Article III of the United States Constitution. The Court's jurisdiction over these claims is  
6 invoked under 28 U.S.C. § 1367.

7 9. Venue is proper in the United State District Court for the Northern  
8 District of California pursuant to 28 U.S.C. § 1391(b)(1) because the defendants are  
9 located in the Northern District of California and § 1391(b)(2) because all of the acts  
10 and/or omissions complained of herein occurred within the Northern District of  
11 California.

## 12 **PARTIES**

13 10. At all times relevant hereto, plaintiff Nanci Armstrong-Temple was a  
14 resident of the City of Berkeley, a community volunteer lending support to a homeless  
15 encampment in Berkeley, and a candidate for Berkeley City Council.

16 11. At all times relevant hereto, plaintiff Barbara Brust was a resident of the  
17 City of Berkeley and a community volunteer lending support to a homeless  
18 encampment in Berkeley. Ms. Brust has a known and visible disability and walks with  
19 the assistance of a cane.

20 12. At all times relevant hereto, plaintiff Michelle Lot was a homeless resident  
21 of Berkeley and member of the First They Came for the Homeless encampment.

22 13. At all times relevant hereto, defendant City of Berkeley was a municipal  
23 corporation, duly organized and existing under the laws of the State of California.  
24 Under its authority, defendant City of Berkeley operates the Berkeley Police  
25 Department and employs its officers, and the Department of Public Works and employs  
26 its workers.

27 14. At all times relevant hereto, defendant Andrew B. Rateaver was a  
28

1 lieutenant police officer employed by the Berkeley Police Department in the City of  
2 Berkeley. He is sued individually and in his official capacity as a lieutenant police  
3 officer for the City of Berkeley.

4 15. At all times relevant hereto, defendant Sean Tinney was a police officer  
5 employed by the Berkeley Police Department in the City of Berkeley. He is sued  
6 individually and in his official capacity as a police officer for the City of Berkeley.

7 16. At all times relevant hereto, defendant Peter Hong was a police officer  
8 employed by the Berkeley Police Department in the City of Berkeley. He is sued  
9 individually and in his official capacity as a police officer for the City of Berkeley.

10 17. At all times relevant hereto, defendant Samantha Martinez was a police  
11 officer employed by the Berkeley Police Department in the City of Berkeley. She is sued  
12 individually and in her official capacity as a police officer for the City of Berkeley.

13 18. At all times relevant hereto, defendant Matthew McGee was a police  
14 officer employed by the Berkeley Police Department in the City of Berkeley. He is sued  
15 individually and in his official capacity as a police officer for the City of Berkeley.

16 19. At all times relevant hereto, defendant Darren Kacalek was a police officer  
17 employed by the Berkeley Police Department in the City of Berkeley. He is sued  
18 individually and in his official capacity as a police officer for the City of Berkeley.

19 20. At all times relevant hereto, defendant Kevin Peters was a police officer  
20 employed by the Berkeley Police Department in the City of Berkeley. He is sued  
21 individually and in his official capacity as a police officer for the City of Berkeley.

## 22 **STATEMENT OF FACTS**

23 21. On November 4, 2016, numerous City employees, including police officers  
24 and members of code enforcement, public works, and homeless outreach raided the  
25 First They Came for the Homeless (“FTCfH”) encampment on the corner of Adeline  
26 Street and Fairview Street, in Berkeley, California. The purpose of the raid was to evict  
27 the encampment and force its members to leave.

1           22.     The eviction occurred, as the ones before it had, at 5 a.m. It was dark and  
2 cold that morning, and residents were awakened by people yelling for them to pack up  
3 their belongings and leave.

4           23.     Defendant Lieutenant Andrew B. Rateaver, who asks residents of the  
5 encampment to call him “Rat,” supervised the raid.

6           24.     In the early morning of November 4, 2016, Lieutenant Rateaver briefed  
7 officers and other city employees from the Department of Public Works and the Parks  
8 Department, who were to assist in the eviction. This briefing included an explanation to  
9 employee participants that the City of Berkeley specifically instructed the eviction of the  
10 encampment by BPD.

11           25.     The City employees arrived at the encampment with ten police cars, City  
12 trucks, and a jail transport van. Police officers ordered that residents pack up their  
13 belongings, giving them fifteen minutes before they began to confiscate property and  
14 turn it over to Public Works.

15           26.     Almost immediately upon the police’s arrival, plaintiff Michelle Lot was  
16 falsely arrested.

17           27.     Ms. Lot emerged from her tent just about 5 minutes after the police  
18 arrived and looked over at her son who was already outside his tent and reaching for a  
19 nearby bull horn.

20           28.     Suddenly, she saw a dark figure lunge at him.

21           29.     The person lunging for her son did not identify him or herself and gave no  
22 instruction to her son before lunging at him.

23           30.     Instinctually, she reached for her son and wrapped her arms around his  
24 waist.

25           31.     Ms. Lot was quickly tackled by members of the Berkeley Police  
26 Department including Officer Matthew McGee and Officer Sean Tinney.

27           32.     When Ms. Lot was tackled, she fell hard on her right side. One officer dug  
28

1 his or her knee sharply into her back causing her unnecessary pain.

2 33. As a result of the tackle, she has chronic pain in her right hip and knee.  
3 She also suffers from pain in her right shoulder due to the tackle and the subsequent  
4 tight application of handcuffs.

5 34. Ms. Lot was arrested transported to Santa Rita Jail in Dublin and held  
6 there until a community member posted bail for her to secure her release. The District  
7 Attorney declined to charge her with any public offense.

8 35. Plaintiff Barbara Brust arrived at the encampment in response to a call for  
9 support. She has long worked with the residents of Berkeley's encampments through  
10 her organization Consider the Homeless.

11 36. At times, she has possessions at the encampment.

12 37. During evictions, Ms. Brust often offers the use of her car so that residents  
13 may securely pack up their belongings. Because Ms. Brust assists the encampment  
14 during raids, she is known to Berkeley police, including Lt. Rateaver and Officer Sean  
15 Tinney.

16 38. Ms. Brust has visible mobility impairment. She walks with a cane.  
17 Members of the Berkeley Police Department including Lieutenant Rateaver have  
18 knowledge of her physical disability.

19 39. On information and belief, the Berkeley Police Department have a dossier  
20 of information on Ms. Brust, which was provided to the officers present at the eviction  
21 on November 4, 2016.

22 40. During the early morning eviction, Ms. Brust stood nearby while residents  
23 of the encampment loaded their belongings into her car.

24 41. Ms. Brust noticed that police were collecting her property and the  
25 property of the residents without providing receipts or an inventory of what was being  
26 taken so that the residents could later reclaim confiscated property.

27 42. Ms. Brust admonished the police for their actions clearing the  
28

1 encampment and demanded that they provide her with a receipt for the items of hers  
2 that they had removed.

3 43. As she was insisting on an inventory, Lieutenant Rateaver approached Ms.  
4 Brust, aggressively grabbed her thumb, stepped on her foot and knocked her to the  
5 ground.

6 44. He then stood over her and taunted her, telling her multiple times to “get  
7 up” while she informed him that she could not because she was disabled.

8 45. She informed the officers that she did not want them to touch her and  
9 asked for her friends to be able to help her up.

10 46. The officers ignored her request and lifted her to a standing position. Ms.  
11 Brust begged for her cane.

12 47. Officer Sean Tinney held on to her cane while Lieutenant Rateaver and  
13 Officer Samantha Martinez attempted to move Ms. Brust by her arms, at Lieutenant  
14 Rateaver’s instruction. Ms. Brust continued to beg for her cane.

15 48. When she struggled to walk with the officers because she needed the use  
16 of her cane, Officer Tinney dropped her cane to the ground and picked up her feet.

17 49. The officers carried her away while she pleaded for her cane.

18 50. The officers did not inform her nor announce that she was under arrest  
19 before picking her up against her will and carrying her to a jail transport van.

20 51. At the van, the officers pushed Ms. Brust up the stairs, still without the  
21 assistance of her cane, and exposed her breast in the process.

22 52. She continued to plead for her cane and for the officers to pull her shirt  
23 down.

24 53. She was detained for over an hour and prevented from communicating  
25 with anyone until she was finally cited and released. The District Attorney declined to  
26 charge her with any public offense.

27 54. Ms. Brust’s physical assault triggered a severe manic depressive episode,  
28

1 for which she sought therapy. She also suffered from Post-Traumatic Stress Disorder  
2 for which she had to seek treatment, although symptoms still linger.

3 55. The condition in her knees for which she used a cane was worsened by the  
4 attack and she experiences an increase in pain. The worsening of her symptoms meant  
5 that she was forced to accelerate her knee replacement surgeries.

6 56. She also has trigger finger in her thumb where Lieutenant Rateaver  
7 grabbed her.

8 57. Plaintiff Nanci Armstrong-Temple also responded to assist encampment  
9 residents at their request.

10 58. Ms. Armstrong-Temple was well known to the Berkeley Police  
11 Department because she was running for the District 2 seat in Berkeley City Council, for  
12 which the election was three days away. Ms. Armstrong-Temple was openly critical of  
13 the Berkeley Police Department and declined to take a meeting with the Berkeley Police  
14 Association for their endorsement; a snub that was well-publicized.

15 59. On information and belief, the Berkeley Police Department have a dossier  
16 of information on Ms. Armstrong-Temple, which was provided to the officers present at  
17 the eviction on November 4, 2016.

18 60. Ms. Armstrong-Temple protested Ms. Brust's unlawful arrest.

19 61. In response to her verbal condemnation of the police's behavior, several  
20 officers including Sergeant Peter Hong, Officers Kevin Peters, Matthew McGee, and  
21 Darren Kacalek used considerable force to wrestle Ms. Armstrong-Temple to the  
22 ground and drag her needlessly across the sidewalk by her limbs.

23 62. Ms. Armstrong-Temple lay on the ground in agony as the officers piled on  
24 top of her and attempted to wrench her arms out from underneath her body.

25 63. With the weight of the officers on her, Ms. Armstrong-Temple could not  
26 assist in placing her hands behind her back as officers instructed.

27 64. Once officers placed her in handcuffs, the officers carried Ms. Armstrong-  
28



1 Temple to the jail transport van, while she was alerting them of pain to her arm and  
2 wrist.

3 65. The officers did nothing to respond to her complaints of pain.

4 66. She was transported to Santa Rita Jail in Dublin and held there until a  
5 family member posted bail for her to secure her release. The District Attorney declined  
6 to charge her with any public offense.

7 67. Ms. Armstrong-Temple suffers from depression, anxiety, and Post  
8 Traumatic Stress Disorder and the abuse she suffered from the police exacerbated her  
9 symptoms. As a result of the officers' actions, she had to seek therapy.

10 68. She also suffered injuries to her shoulders, wrists, ankle and rib for which  
11 she had to seek medical care and physical therapy. Her rib still causes her pain.

12 69. Ms. Armstrong-Temple was a dance, creative movement, and musical  
13 theater teacher. As a result of her physical injuries, she had to quit teaching for six  
14 months and while she has returned to teaching, she remains on a reduced schedule.

15 70. Ms. Armstrong-Temple's campaign also irrevocably suffered. The eviction  
16 occurred on the eve of the election for City Council, and the headlines of her arrest for  
17 the horrifically named "lynching," or removing a person from lawful police custody,  
18 made headlines.

19 71. None of Ms. Armstrong-Temple's conduct could be construed as lynching,  
20 and the allegation by officers was egregious retaliation for her criticism of the Berkeley  
21 Police Department.

22 **EXHAUSTION OF ADMINISTRATIVE RELIEF**

23 72. On May 3, 2017, Barbara Brust, Nanci Armstrong-Temple and Michelle  
24 Lot submitted a claim pursuant to California Government Code section 910 *et seq.*

25 73. On May 24, 2017, the City of Berkeley rejected their claims.

26 ///

27 ///

28 ///

**FIRST CLAIM FOR RELIEF**  
**RETALIATION AGAINST PROTECTED ACTIVITY IN VIOLATION OF THE**  
**FIRST AMENDMENT**

(By plaintiffs against defendants Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Matthew McGee, Officer Samantha Martinez, Officer Kevin Peters, and Officer Darren Kacalek)  
(42 U.S.C. § 1983)

74. Plaintiffs incorporate by reference paragraphs 1 through 73 above as though fully set forth herein.

75. By virtue of the foregoing, plaintiffs were engaged in constitutionally protected activity when defendants Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Matthew McGee, Officer Samantha Martinez, Officer Kevin Peters, and Officer Darren Kacalek carried out the evictions of the First They Came for the Homeless (“FTCftH”) encampment. By verbally protesting the police’s unlawful actions and unjust treatment of the members of FTCftH, plaintiffs exercised their First Amendment rights to freedom of speech, freedom to assemble, and freedom of association.

76. The assault and arrest experienced by plaintiffs was motivated by plaintiffs’ constitutionally protected right to protest.

77. The actions of defendants Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Matthew McGee, Officer Samantha Martinez, Officer Kevin Peters, Officer Darren Kacalek were committed with an intent to chill and interfere with plaintiffs’ constitutionally protected rights to speech, assembly, and association in violation of the First Amendment of the Constitution of the United States.

///

///

///

///

**SECOND CLAIM FOR RELIEF**  
**USE OF EXCESSIVE FORCE IN VIOLATION OF THE FOURTH**  
**AMENDMENT**

(By plaintiffs against defendants Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Matthew McGee, Officer Samantha Martinez, Officer Kevin Peters, and Officer Darren Kacalek.)  
(42 U.S.C. § 1983)

78. Plaintiffs incorporate by reference paragraphs 1 through 77 above as though fully set forth herein.

79. By virtue of the foregoing, defendants Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Matthew McGee, Officer Samantha Martinez, Officer Kevin Peters, and Officer Darren Kacalek acted under color of law when they violently detained and arrested plaintiffs Barbara Brust, Nanci Armstrong-Temple, and Michelle Lot without lawful justification and deprived plaintiffs of their right under the Fourth Amendment to the United States Constitution to be free of unreasonable seizure of his person by use of excessive force.

**THIRD CLAIM FOR RELIEF**  
**FAILURE TO TRAIN AND SUPERVISE**  
(By plaintiffs against defendant City of Berkeley.)  
(42 U.S.C. § 1983)

80. Plaintiffs incorporate by reference paragraphs 1 through 79 above as though fully set forth herein.

81. Defendant City of Berkeley failed in its obligation to adequately train and supervise its police officers to refrain from subjecting persons being detained to excessive force.

82. By virtue of the foregoing, defendant City of Berkeley was deliberately indifferent to the obvious consequences of its failure to train its police officers. As a result of inadequate training policies, officers employed by the City of Berkeley deprived Nanci Armstrong-Temple, Barbara Brust, and Michelle Lot of their rights, as set forth above.

1 **FOURTH CLAIM FOR RELIEF**  
2 **FAILURE TO REASONABLY ACCOMMODATE IN VIOLATION OF TITLE II**  
3 **OF THE AMERICANS WITH DISABILITIES ACT OF 1990**  
4 (By plaintiffs Barbara Brust against defendants Lieutenant Andrew B. Rateaver, Officer  
5 Sean Tinney and Samantha Martinez)  
6 (42 U.S.C. § 12132.)

7 83. Plaintiffs incorporate by reference paragraph 1 through 82 above as  
8 though fully set forth herein.

9 84. At all times relevant to this action, defendants were each a “public entity”  
10 within the meaning of the ADA under 42 U.S.C. § 12131(1).

11 85. Plaintiff Brust is a qualified individual with a disability within the  
12 meaning of the ADA and is substantially limited in the major life activities of walking  
13 and standing.

14 86. Defendants have excluded plaintiff from participation in the services,  
15 programs and activities of the Berkeley Police Department, and have denied them the  
16 rights and benefits accorded to other persons, solely by reason of their disabilities in  
17 violation of the ADA.

18 87. In addition, the Defendants have violated the ADA by failing or refusing  
19 to provide plaintiff with reasonable accommodations and other services related to her  
20 disability.

21 88. As a direct and proximate result of the aforementioned acts, plaintiffs  
22 Brust has suffered, and continues to suffer, hardship, injuries, and deteriorating  
23 physical and mental condition, due to defendants’ failures to address accommodations,  
24 modifications, services, and access required for plaintiffs’ disabilities.

25 **FIFTH CLAIM FOR RELIEF**  
26 **VIOLATION OF CALIFORNIA BANE ACT**  
27 (By plaintiffs against all defendants)  
28 (California Civil Code § 52.1)

89. Plaintiffs incorporate by reference paragraphs 1 through 88 above as  
though fully set forth herein.

90. By virtue of the foregoing, defendants City of Berkeley, Lieutenant

Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Samantha Martinez, Officer Matthew McGee, Officer Kacalek, and Officer Kevin Peters, interfered by threats, intimidation, or coercion with the rights of Nanci Armstrong-Temple, Barbara Brust, and Michelle Lot secured by the Constitution of the United States and the Constitution of the State of California.

91. By virtue of the foregoing, all defendants acted with malice and oppression and the intent to deprive and did deprive Nanci Armstrong-Temple, Barbara Brust, and Michelle Lot of their rights to be free from detention using excessive force.

**SIXTH CLAIM FOR RELIEF  
FALSE ARREST**

(By plaintiffs against defendants Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Matthew McGee, Officer Samantha Martinez, Officer Kevin Peters, Officer Darren Kacalek)

92. Plaintiffs incorporate by reference paragraphs 1 through 91 above as though fully set forth herein.

93. By virtue of the foregoing, defendants Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Matthew McGee, Officer Samantha Martinez, Officer Kevin Peters, and Officer Darren Kacalek arrested and imprisoned plaintiffs without reasonable or probable cause to believe that they committed a crime.

94. In doing so, defendants violated section 853.6 of the California Penal Code.

**SEVENTH CLAIM FOR RELIEF  
BATTERY BY A POLICE OFFICER  
(By plaintiffs against all defendants.)**

95. Plaintiffs incorporate by reference paragraphs 1 through 94 above as though fully set forth herein.

96. By virtue of the foregoing, defendants Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Samantha Martinez, Officer Matthew McGee, Officer Kacalek, and Officer Kevin Peters intentionally subjected plaintiffs

1 Nanci Armstrong-Temple, Barbara Brust and Michelle Lot to harmful or offensive  
2 contact through the use of unreasonable force.

3 97. By virtue of the foregoing, defendant City of Berkeley learned that  
4 Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer  
5 Samantha Martinez, Officer Matthew McGee, Officer Kacalek, and Officer Kevin Peters  
6 intentionally subjected plaintiffs to the use of unreasonable force and approved such  
7 conduct.

8 98. By virtue of the foregoing, defendant City of Berkeley is liable for the acts  
9 of its employees, Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean  
10 Tinney, Officer Samantha Martinez, Officer Matthew McGee, Officer Kacalek, and  
11 Officer Kevin Peters, all of whom acted within the course and scope of their  
12 employment.

13 **EIGHTH CLAIM FOR RELIEF**  
14 **NEGLIGENCE**  
(By plaintiffs against all defendants)

15 99. Plaintiffs incorporate by reference paragraphs 1 through 98 above as  
16 though fully set forth herein.

17 100. By virtue of the foregoing, defendants Lieutenant Andrew B. Rateaver,  
18 Sergeant Peter Hong, Officer Sean Tinney, Officer Samantha Martinez, Officer Matthew  
19 McGee, Officer Kacalek, and Officer Kevin Peters breached their duty to not use  
20 excessive force against plaintiffs Nanci Armstrong-Temple, Barbara Brust, and Michelle  
21 Lot and this breach was the proximate cause for their harm.

22 101. By virtue of the foregoing, defendant City of Berkeley learned Lieutenant  
23 Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney, Officer Samantha  
24 Martinez, Officer Matthew McGee, Officer Kacalek, and Officer Kevin Peters breached  
25 their duty to not use excessive force against plaintiffs and approved such conduct.

26 102. By virtue of the foregoing, defendant City of Berkeley is liable for the acts  
27 of its employees, Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean  
28

1 Tinney, Officer Samantha Martinez, Officer Matthew McGee, Officer Kacalek, and  
 2 Officer Kevin Peters, each of whom acted within the course and scope of his  
 3 employment.

4 103. By virtue of the foregoing, defendant City of Berkeley failed to use  
 5 reasonable care in the training and supervision of Lieutenant Andrew B. Rateaver,  
 6 Sergeant Peter Hong, Officer Sean Tinney, Officer Samantha Martinez, Officer Matthew  
 7 McGee, Officer Kacalek, and Officer Kevin Peters.

8 **NINTH CLAIM FOR RELIEF**  
 9 **VIOLATION OF THE UNRUH ACT**  
 (By plaintiffs Barbara Brust against all defendants.)  
 10 (California Civil Code §§ 51 *et seq.*)

11 104. Plaintiffs incorporate by reference paragraphs 1 through 103 above as  
 12 though fully set forth herein.

13 105. The California Unruh Act provides that a violation of the Americans with  
 14 Disabilities Act shall also constitute a violation of the Unruh Act.

15 106. By virtue of the foregoing, defendants Andrew B. Rateaver, Sergeant Peter  
 16 Hong, Officer Sean Tinney, Officer Samantha Martinez, Officer Matthew McGee,  
 17 Officer Kacalek, and Officer Kevin Peters have violated the Unruh Act by violating  
 18 section II of the ADA, as alleged in plaintiff's Fourth Claim for Relief.

19 **DAMAGES**

20 107. As a result of the actions of defendants, plaintiffs have been injured and  
 21 have suffered damages as follows:

22 a. They have been physically, mentally, emotionally, and financially  
 23 injured and damaged as a proximate result of the wrongful actions of the public  
 24 employees named above, and others;

25 b. In taking the actions alleged above, defendants the City of  
 26 Berkeley, Lieutenant Andrew B. Rateaver, Sergeant Peter Hong, Officer Sean Tinney,  
 27 Officer Samantha Martinez, Officer Matthew McGee, Officer Kacalek, and Officer Kevin  
 28 Peters, engaged in conduct that was malicious, oppressive, and in reckless disregard of

1 the rights of plaintiffs. Accordingly, plaintiffs are entitled to punitive damages against  
2 defendants the City of Berkeley, Lieutenant Andrew B. Rateaver, Sergeant Peter Hong,  
3 Officer Sean Tinney, Officer Samantha Martinez, Officer Matthew McGee, Officer  
4 Kacalek, and Officer Kevin Peters.

5 WHEREFORE, plaintiffs request that this Court grant them relief as follows:

- 6 (1) General damages, in an amount to be determined;  
7 (2) Special damages, in an amount to be determined;  
8 (3) Punitive damages, in an amount to be determined;  
9 (4) Reasonable attorney's fees under 42 U.S.C. § 1988;  
10 (5) Injunctive relief;  
11 (6) Costs of suit; and  
12 (7) Such other and further relief as the Court may deem proper.

13 **DEMAND FOR TRIAL BY JURY**

14 Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal  
15 Rules of Civil Procedure.

16 Dated: November 24, 2017

17 SIEGEL, YEE, & BRUNNER

18  
19 By: /s/EmilyRose Johns  
EmilyRose Johns

20 Attorney for Plaintiffs  
21 Nanci Armstrong-Temple  
22 Barbara Brust,  
23 and Michelle Lot  
24  
25  
26  
27  
28